

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Atty. Sam Tahmassebi on 9/9/08.

The application has been amended as follows:

IN THE CLAIMS:

20. CANCELLED

21. (CURRENTLY AMENDED) The method of claim ~~20~~ 29, wherein said heating step takes place prior to said disrupting step.

29. (CURRENTLY AMENDED) A method for accelerating nutrient uptake in bacteria or yeast without a substantially commensurate increase of biomass, comprising contacting said bacteria or yeast with a mixture of an aerobic yeast fermentation supernatant and a surface-active agent, whereby the nutrient uptake in said bacteria or yeast is increased without a substantially commensurate increase of biomass, wherein the mixture of the aerobic yeast fermentation supernatant and the surface-active agent is obtained by:

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fermenting under aerobic conditions a plurality of yeast cells in the presence of a nutrient source,

heating the plurality of yeast cells after the fermenting step, wherein said heating step comprises increasing the temperature of said plurality of yeast cells to between about 40° to about 60° C for about 2 to about 24 hours, followed by cooling to less than 25° C,

disrupting the cellular structure of some of the plurality of yeast cells to obtain a fermentation product,

centrifuging the fermentation product to obtain the aerobic fermentation supernatant containing peptides, and

combining the aerobic fermentation supernatant with the surface-active agent.

59. (CURRENTLY AMENDED) A method for accelerating nutrient uptake in bacteria or yeast without a substantially commensurate increase in biofilm production, comprising contacting said bacteria or yeast with a mixture of an aerobic yeast fermentation supernatant and a surface-active agent, whereby the nutrient uptake in said bacteria or yeast is increased without a substantially commensurate increase of biofilm production,

wherein the mixture of the aerobic yeast fermentation supernatant and the surface-active agent is obtained by:

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fermenting under aerobic conditions a plurality of yeast cells in the presence of a nutrient source,

heating the plurality of yeast cells after the fermenting step, wherein said heating step comprises increasing the temperature of said plurality of yeast cells to between about 40° to about 60° C for about 2 to about 24 hours, followed by cooling to less than 25° C,

disrupting the cellular structure of some of the plurality of yeast cells to obtain a fermentation product,

centrifuging the fermentation product to obtain the aerobic fermentation supernatant containing peptides, and

combining the aerobic fermentation supernatant with the surface-active agent.

62. CANCELLED

Claims 2-4, 6-18, 21, 29-33, 40-47, 52, 59 are allowable. Claims 48-51, previously withdrawn from consideration as a result of a restriction requirement, require all the limitations of an allowable claim. Pursuant to the procedures set forth in MPEP § 821.04(a), the restriction requirement between inventions drawn to species of: particular yeast, nutrient source, mechanical devices, surfactant, size of product, physical processes of refining, as set forth in the Office action mailed on 9/29/06, is hereby withdrawn and claims 48-51 are hereby rejoined and fully examined for patentability

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under 37 CFR 1.104. In view of the withdrawal of the restriction requirement, applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Claims 2-4, 6-18, 29-33, 40-52 and 59 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NANCY VOGEL whose telephone number is (571)272-0780. The examiner can normally be reached on 7:00 - 3:30, Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Woitach can be reached on (571) 272-0739. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/NANCY VOGEL/
Primary Examiner, Art Unit 1636

9/9/08
NV